

APPEAL NO. 010827

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on March 30, 2001. The issues were: (1) what is the date of maximum medical improvement (MMI), and (2) what is the impairment rating (IR). The hearing officer found that the date of MMI was October 13, 2000, with an IR of 12%, as assessed by Dr. T, the designated doctor. The appellant (carrier) appealed on the basis that the computation of the IR of 12% was incorrect, and that the designated doctor misapplied a portion of the Guides to the Evaluation of Permanent Impairment, third edition, second printing, dated February 1989, published by the American Medical Association (AMA Guides). The carrier also complains of the MMI date. The respondent (claimant) did not respond on appeal.

DECISION

Affirmed.

It is undisputed that the claimant suffered a compensable injury to her shoulder and lower back in a fall on _____. A required medical exam was sought by the carrier on August 23, 2000; Dr. L found MMI on that date, with an IR of 0%. The claimant disputed that rating, and the Texas Workers' Compensation Commission (Commission) appointed Dr. T as the designated doctor. Dr. T found the claimant at MMI on the date of examination, October 13, 2000, with a total of 12% whole body impairment. Dr. T assessed 7% for a specific spinal injury from Table 49, Section II(C) of the AMA Guides. The balance of 5% IR was added as a result of an 8% impairment for upper extremity loss for range of motion for the right shoulder.

The carrier disagreed with the designated doctor's assessment of specific injury to the spine, citing the fact that Section II(C) of Table 49 requires that for a rating for an intervertebral disc or other soft tissue lesions, there be an "Unoperated, with medically documented injury *and a minimum of six months of medically documented pain, recurrent muscle spasm, or rigidity* associated with moderate to severe degenerative changes on structural tests, *including unoperated herniated nucleus pulposus*, with or without radiculopathy." (Emphasis added).

While the examination and finding on October 13, 2000, was barely four months after the _____, injury, not the minimum six, carrier argued, there could not have been any documentation of six months of pain. The Commission wrote to Dr. T, who responded as to that issue:

“...[On October 13, 2000,] the patient clearly appeared to be at MMI and as such I did not feel that there was going to be any appreciable improvement of her symptoms. She clearly had structural abnormalities such as were documented by table 49, II-C which if she had six months of complaints

would have qualified without dispute for the 7% impairment of her lumbar spine. No additional months are going to change that structural abnormality; therefore, I do not feel that the patient should be disallowed the 7% merely because she has not undergone a six month period of time, and by the same token no additional period of time is going to resolve the disc and therefore it should remain in place. My impairment evaluation of the patient does not change on that basis. . . .

It is well established that the designated doctor's report should not be rejected "absent a substantial basis to do so." Texas Workers' Compensation Commission Appeal No. 93039, decided March 1, 1993, and Texas Workers' Compensation Commission Appeal No. 962154, decided December 4, 1996. In this case the designated doctor has explained why he assigned a guideline which does *not* fit the pain requirement of Section II(C) but *does* fit the guideline because of her diagnosed herniated disc. We hold that there has been no misapplication of the guidelines, and that there is only a difference in medical opinion whether claimant's condition justifies awarding the impairment. There is no great weight of other medical evidence which overrides the presumptive weight given the designated doctor report.

As to the MMI, there is no evidence to suggest that the designated doctor's date is incorrect, other than the fact that the carrier's doctor judged it to be earlier. Therefore, the designated doctor's report is entitled to presumptive weight.

The hearing officer's decision and order are affirmed.

Thomas A. Knapp
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Susan M. Kelley
Appeals Judge